IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

FAO.No. 108 of 2007()

AGAINST THE ORDER IN IA 5772/06 IN
OS.272/2002 of I ADDL.SUB COURT, THRISSUR
.....

: APPELLANT IN FAO/RESPONDENT IN IA/PLAINTIFF IN OS

SREEDEVI, W/O THATTAMPARAMBIL
CHANDRAKUMAR, PRASOONAM, PUNKUNNAM DESOM,
THRISSUR VILLAGE AND THRISSUR TALUK.

BY ADV. SRI.P.GOPINATH

RESPONDENTS: RESPONDENT IN FAO/PETITIONER IN IA/DEFENDANT IN OS

THANKAM, D/O NJARENGAT ITTANAMMA @ AMMU,
KIRALUR DESOM AND VILLAGE, TALAPPILLY TALUK.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 04/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN, JJ.

F.A.O.No.108 of 2007

Dated 4th April, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is directed against the order in I.A.5772/06 in O.S.272/02, on the file of the Sub Court, Thrissur. The petitioner/plaintiff filed the suit for a declaration that the decree in O.S.836/92 is vitiated by fraud, misrepresentation etc. and is not binding on the plaintiff. She moved I.A.3298/03 under Order XXXIX Rule 1 of the Code of Civil Procedure seeking a temporary injunction restraining the defendants from interfering with the possession of the property, pursuant to the preliminary decree in O.S.836/92 for partition. By order dated 5.7.2003, it is submitted that the court below passed an order to maintain status quo till the disposal of the suit. The first defendant/respondent thereafter moved I.A.No.5772/06 for vacating/varying the order dated 5.7.2003. The court below, observing that the appellant herein has not challenged the preliminary decree in O.S.836/92 in appeal and that there is no stay of passing of final decree, passed the order under challenge, permitting the Advocate Commissioner to measure the property, as part of the final decree proceedings. It is made clear in the order itself that the

status quo order originally granted in I.A.3298/03 is varied only to that extent till the application is finally disposed of. Though the learned counsel appearing for the appellant raised several contentions, particularly a contention that the modification now ordered is without satisfying the pre-conditions specified under Order XXXIX Rule 4, we do not think that at this stage, we should address all those contentions since no irreparable injury is caused to the appellant by the modification as granted by the court below. The suit is of the year 2002. The interlocutory application apparently is pending also. Therefore, it will be open to the appellant, if so advised, to move the court below for expeditious disposal of the suit, pending the proceedings in the final decree in O.S.836/92. Without prejudice to such liberty, this appeal is dismissed.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 4th April, 2007.